



Kentucky Law Journal

Volume 16 | Issue 3

Article 6

1928

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Recommended Citation

Jones, J. W. (1928) "Should Injury or Death from Heat Stroke Be Compensable Under the Kentucky Workmen's Compensation Act?," *Kentucky Law Journal*: Vol. 16 : Iss. 3 , Article 6.
Available at: <https://uknowledge.uky.edu/klj/vol16/iss3/6>

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SHOULD INJURY OR DEATH FROM HEAT STROKE BE
COMPENSABLE UNDER THE KENTUCKY
WORKMEN'S COMPENSATION ACT?

Section 1 of the Kentucky Workmen's Compensation Act provides in part, "It (the Act) shall effect the liability of the employers subject thereto to their employes for personal injuries sustained by the employe by accident arising out of and in the course of the employment, or for death resulting from such accidental injury; provided, however, that personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall they include the results of a pre-existing disease, but shall include injuries or death due to the inhalation in mines of noxious gases or smoke, commonly known as 'bad air', and also shall include the injuries or death due to the inhalation of any kind of gas."¹

In the case of *Smith et al v. Standard Sanitary Mfg. Co.*,² an employe was working in defendant's foundry. The employe was examined by defendant's physician and found to be in good health. The employee worked during the day until 4:45 p. m. He walked home with a co-employe and complained of feeling tired. By seven o'clock that evening he was delirious. His temperature rose to 107 degrees. He died the next morning. The evidence showed that the employe, while in the course of his employment, was exposed to excessive heat due to the inclosed nature of the building and to the melted metal handled there. It was found as a fact that the employe died from a heat stroke. The Kentucky Court of Appeals denied the claimants compensation on the ground that heat stroke was not an accident, but a disease which did not arise from a traumatic injury by accident. This case represents the law in Kentucky at the present time on the point involved.

The writer proposes to show that the facts of the above case warranted compensation to the claimants. In order to do this it will be necessary to show (1) that "heat stroke" is a personal injury sustained by accident, or (2) assuming that "heat stroke" is a disease, to prove that it results from trauma. The

¹ Kentucky Statutes, sec. 4880

² 211 Ky. 454, 277 S. W. 806 (1925)

court admitted that the injury arose out of and in the course of employment.

"Accident" is defined in Webster's International Dictionary as being, "An event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event; an undesigned and unforeseen occurrence of an afflictive or unfortunate character." It is a matter of common knowledge that heat stroke is a sudden and unexpected event. There is a conflict of authority, however, as to whether heat stroke is a disease or an accidental personal injury. In the field of medicine heat stroke is usually considered as a disease.³ Injury from heat stroke is generally considered to be an injury by accident within the meaning of Compensation Acts, and compensation therefor is awarded in a majority of the jurisdictions having Compensation Acts, if the employe was especially exposed to excessive heat by reason of his employment.⁴

In *Young v. Western Furniture and Mfg. Co.*,⁵ the employe was working in a corrugated steel building with a tar roof. The building was also inadequately ventilated. Due to his exposure to the excessive heat in the building the employe received a heat stroke, from the effects of which he died. In discussing the case the court said, "The death was an accident in the sense that it was unexpected, and was not such a result as would naturally follow the employment, but grew out of it and the decedent died because of it." Compensation was awarded to the claimant. In the case of *Hernon v. Holahan et al.*,⁶ the employe became overheated while unloading lumber and death resulted. The court held that death was accidental and resulted from heat stroke. The court awarded the claimant compensa-

³ See *Dozier v. Fidelity & Casualty Co.*, 46 Fed. 446 (1891).

⁴ *Ismay v. Williams*, 77 L. J. P. C. N. S. 107 (1908), an English case; *Matis v. Schaeffer*, 270 Pa. 141, 113 Atl. 64 (1921); *State v. District Court*, 138 Minn. 250, 164 N. W. 916 (1917); *Kanscheit v. Garrett Laundry Co.*, 101 Neb. 702, 164 N. W. 708 (1917); *Walsh v. River Spinning Co.*, 41 R. I. 490, 103 Atl. 1025 (1918); *Joliet v. Industrial Commission*, 291 Ill. 555, 126 N. E. 618 (1920); *Ahern v. Spier*, 93 Conn. 151, 105 Atl. 340 (1918); *Texas Employer's Ins. Assn. v. Moore*, 279 S. W. 516 (1925); *Townsend & F. Co. v. Taggart*, 144 N. E. (Ind.) 556 (1924); *Skelly Oil Co. v. State Industrial Commission*, 91 Okla. 194, 216 Pac. 933 (1923); *Pace v. North Dakota Workmen's Compensation Bureau*, 201 N. W. 348 (1924). See L. R. A. 1916A 23; L. R. A. 1918F 936; 20 A. L. R. 42; 40 A. L. R. 402; 46 A. L. R. 1218.

⁵ 101 Neb. 696, 164 N. W. 712 (1917)

⁶ 169 N. Y. Supp. 705 (1918)

tion under the Workmen's Compensation Act. The case of *Days v. Trimmer*,⁷ presents an analogous situation. In that case the claimant was employed by defendant to carry coal. On a very cold and stormy day, while claimant, wearing only a pair of very thin gloves, was engaged in carrying coal; all his fingers and toes were frostbitten. The court in discussing the case said, "Beyond question the injuries sustained by the claimant in the case at bar were accidental, within the meaning of the Workmen's Compensation Law." Compensation was awarded to the claimant. In the case of *Ismay v. Williams*, *supra*, a workman, while in a weakened physical condition, was raking ashes from beneath the boiler in a stokehole, and received a heat stroke which resulted in his death. In discussing that case Lord Loreburn used the following language, "To my mind the weakness of the deceased which predisposed him to this form of attack is immaterial. The fact that a man who has died from a heat stroke was, by physical debility, more likely than others so to suffer can have nothing to do with the question whether what befell him is to be regarded as an accident or not . . . In my opinion this man died from an accident. What killed him was a heat stroke, coming suddenly and unexpectedly upon him while at work. Such a stroke is an usual effect of a known cause, often, no doubt, threatened, but generally averted by precautions which experience in this instance had not taught. It was an unlooked-for mishap in the course of his employment. In common language it was a case of accidental death." Honnold says, "The general rule drawn from the English cases is that where the accident is due to the forces of nature which might have been foreseen, there is an aggravation of the danger if the workman is more exposed as a result of his employment than the ordinary man, and if the danger is increased by reason of the employment, the employer is liable for compensation for disability from sunstroke, freezing and lightning. These are forces of nature which he cannot foresee and prevent, and the employe is ordinarily no more subject to injury from such sources than are others. But where the work and the method of doing the work expose the employe to the forces of nature to a greater extent than he would be if not so engaged, the industry increases the danger

⁷ 162 N. Y. Supp. 603 (1916)

from such forces and the employer is liable.”⁸ Dosker makes the following statement on the subject under discussion, “Injuries from heat and cold, such as sunstroke, heat prostration, freezing and frost bite, caused by the severity of the natural elements are not generally held to be accidents arising out of and in the course of the employment, unless the nature of the employment is such that those dangers are one of the natural hazards connected with it.”⁹

These above cases and citations are representative of the weight of authority that, within the meaning of Compensation Acts, heat stroke is not regarded as a disease, but as a personal injury by accident. Granting that the Kentucky Court of Appeals is correct in holding that heat stroke is a disease and not a personal injury by accident, compensation for injury or death therefrom can be awarded under the Kentucky Act by holding that the “disease” results from a traumatic injury by accident. The foregoing cases seem to establish the conclusion that heat stroke is accidental, whether it be considered as a personal injury or as a disease. It now remains to be shown that heat stroke results from trauma. “Trauma” is defined in The Century Dictionary and Cyclopedia as being, “An abnormal condition of the living body produced by external violence.” By making a subtle, yet reasonable, analysis of the “disease” it may well be said that its cause is traumatic. The cause of heat stroke is the exposure to heat of such intensity that its strength and force are sufficient to overpower and paralyze the vital centers of the body. In the case of *State v. District Court, supra*, an employe was shovelling sand upon an open street, and due to the humidity of the air, and the direct rays of the sun, the employe suffered a heat stroke. The court ruled that heat stroke was a personal injury caused by accident within the meaning of the Workmen’s Compensation Act. In discussing the case the court said, “The intense heat of the sun, associated with the humidity of the atmosphere emanating from the wet sand, as an external cause, was a violent agency, in the sense that it worked upon decedent so as to cause his injury and death. The conclusion that his death was by violent and external means

⁸ Honnold on Workmen’s Compensation, page 428, as quoted in Fifth Ky. Leading Decisions, page 60.

⁹ Dosker’s Manual of Workmen’s Compensation, page 113.

is inevitable. That his death was unnatural imports a violent agency as the cause."

In *Hollenbach Co. v. Hollenbach*,¹⁰ the Court of Appeals of Kentucky says that the act should be liberally construed with a view to effectuating the intention of its makers. To hold that injury or death from heat stroke is not compensable is, it seems, a strict construction of the Act. And the Kentucky Court of Appeals, by adopting this view, has diverted from the main current of authority and wandered afar from the humane purpose for which the act was passed. It seems that the class of workmen whose employment subjects them to great heat and who sometimes succumb to such heat are especially in need of the protection of the Compensation Act. The Kentucky Act expressly allows compensation for injury or death from inhalation in mines of poisonous gas. It is submitted that from the standpoint of reason and justice, an employe who is injured by being exposed to air which is saturated with poisonous gas, is no more entitled to compensation for such injury than is the employe who is injured by being exposed to air that is freighted with deadly heat.

J W JONES.

¹⁰ 181 Ky. 262, 204 S. W. 152 (1918)